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State v. Pittman Appellant's Brief Dckt. 44687

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44687
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR-FE-2015-12589
v.	)	
	)	
BENJAMIN ZIMBALIST PITTMAN,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
	)	

STATEMENT OF THE CASE

Nature of the Case

Benjamin Zimbalist Pittman pled guilty to felony domestic battery. The district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. After Mr. Pittman completed his rider, and notwithstanding the recommendation of the Idaho Department of Correction ("IDOC") to grant probation, the district court relinquished jurisdiction. Mr. Pittman filed a Rule 35 motion for reduction of his sentence, and the district court denied it. On appeal, Mr. Pittman asserts that the district court abused its discretion by imposing an excessive sentence, by relinquishing jurisdiction, and by denying his motion for Rule 35 leniency.

Statement of the Facts & Course of Proceedings

Mr. Pittman, 23, had been dating Danielle Lance for approximately two years. (PSI, pp.2, 39.)[1] They had fought in the past, and despite a no contact order, they were living together at a friend's apartment in Boise. (PSI, p.39.) On August 13, 2015, they had an argument about their relationship; Ms. Lance had been seeing someone else, and Mr. Pittman became upset. (PSI, p.39.) He told her they could not be together anymore and began packing up her clothing. (PSI, p.39.) The argument grew loud and became physical; she kicked him, he hit her and shoved her to the ground, and they engaged in a scuffle leaving marks on Ms. Lance's neck. (R., pp.41-42; PSI, pp.39-46.)

Mr. Pittman and Ms. Lance reconciled and moved to Georgia for a short time. When they returned to Boise, Mr. Pittman was arrested and charged with attempted strangulation, violation of a no contact order, and misdemeanor battery. (R., pp.13-16.)

Pursuant to the terms of a plea agreement, Mr. Pittman pled guilty to felony domestic battery and agreed to submit to a domestic violence evaluation. (R., pp.41-42; Tr., p.8, Ls.8-25.) In exchange, the State agreed to ask for a sentence of seven years, with two years fixed, and to recommend either probation or a rider, depending on the results of the evaluation. (Tr., p.9, Ls.3-7.)

At the sentencing hearing, the State asked the court to sentence Mr. Pittman to a term of seven years, with two years fixed; because the evaluation indicated Mr. Pittman presented a high risk for re-offense, the State recommended a rider. (PSI, pp.11-12; Tr., p.25, Ls.11-15.) Mr. Pittman asked the court to place him on probation, informing the court he had a job waiting,

[1] Citations to the Presentence Investigation Report and attached materials will use the designation "PSI" and will include the page numbers associated with the 195-page electronic file containing those documents.

and had enrolled himself in an intensive, outpatient behavioral health treatment program, as had been recommended in his GAIN-1 Assessment and Domestic Violation Evaluation. (Tr., p.28, Ls.6-12; PSI, pp.12-13, 55.) The district court adopted the State's recommendation and imposed a seven-year sentence, with two years fixed. (Tr., p.32, Ls.22–24.) The court retained jurisdiction so that Mr. Pittman could participate in intensive counseling and treatment, and "earn ultimately a probation recommendation" from IDOC's retained jurisdiction program. (Tr., p.33, Ls.9-18.)

Mr. Pittman successfully completed his rider program, and the IDOC recommended probation. (PSI, p.188.) As its basis for that recommendation, the IDOC cited Mr. Pittman's "positive changes in his thinking patterns, attitudes and beliefs"; that he had "participated well in activities and completed all assigned programs satisfactorily"; and, finally, that he was "not seen as a serious disciplinary problem indicating [he] should be able to follow the rules of probation." (PSI, p.188.)

The district court declined to follow the recommendation, however, and entered an order relinquishing jurisdiction. (R., pp.67-68; Tr., p.40, Ls.3-6.) Mr. Pittman filed a notice of appeal from the order that same day.

Mr. Pittman timely filed Rule 35 motion for reduction of sentence, together with a letter detailing the positive insight he gained through the rider program. (R., pp.73-77.) The district court denied the motion. (R., pp.78-79.) Mr. Pittman filed another Rule 35 motion, asking the court to reconsider its previous order, and provided a letter outlining his probation plan. (R., pp.80-82.) The district court denied that motion, too. (R., pp.84-85.)

On appeal, Mr. Pittman contends that the district court abused its discretion by imposing a sentence that was excessive under the circumstances, by relinquishing jurisdiction, and by denying his first Rule 35 motion.

ISSUES

1. Did the district court abuse its discretion when it imposed a unified sentence of seven years, with two years fixed, following Mr. Pittman's plea of guilty to domestic battery?

2. In light of Mr. Pittman's successful completion of his rider, and the IDOC's recommendation for probation, did the district court abuse its discretion by relinquishing jurisdiction instead of placing him on probation?

3. Did the district court abuse its discretion when it denied Mr. Pittman's Rule 35 Motion for a Reduction of Sentence in light of the new information he presented?

ARGUMENT

I.

The District Court Abused Its Discretion When It Sentenced Mr. Pittman To A Unified Term Of Seven Years, With Two Years Fixed, Following Mr. Pittman's Plea Of Guilty To Domestic Battery

Where a defendant challenges his sentence as excessively harsh, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court's sentencing decisions for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, "under any reasonable view of the facts." *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). "A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution." *Miller*, 151 Idaho at 834.

Mr. Pittman was adopted as an infant, after his biological parents left him at the hospital with cocaine and syphilis in his blood. (PSI, p.45.) Although his adoptive mother, Maybelle Pittman, raised him as a single parent in a loving and supportive family, Mr. Pittman has struggled with abandonment issues. (PSI, pp.6, 45, 131.)

As a teenager, he was sent away from his home to live with uncles. (PSI, p.45.) While living away, he had a romantic relationship and, in 2009, he became a father; he was 18 years old. (PSI, p.45.) He was moved to Boise to live with another uncle and complete his schooling; he worked odd jobs and sent money to his child's mother. (PSI, pp.45, 48.) His uncle moved away, back to California, and Mr. Pittman became homeless for a time. (PSI, pp.45, 47.) He had another, brief, romantic relationship, and a second child, a son, in 2013. (PSI, p.47.)

In 2014, Mr. Pittman began dating Ms. Lance, the victim in this case. (PSI, p.46.) On the day of the offense, Ms. Lance had disclosed that she was seeing someone else. (PSI, pp.6, 39.) Mr. Pittman was hurt and became upset. (PSI, pp.7, 39.)

He told his presentence investigator that he felt "horrible" about his actions against Ms. Lance, (PSI, p.9), and "I feel bad about everything because I love her deeply and wish it never would [have] went down like that … I tak[e] full responsibility in my actions." (PSI, p.39.) He arrived at his sentencing hearing, ready to begin the intensive programming recommended by the GAIN-1 Assessment and the Domestic Violence Evaluation. (Tr., p.30, Ls.16-19.) He also addressed the court, acknowledging:

> I [made] mistakes in my past, and I take responsibility for my mistakes. I don't want the errors of my past to define the man and the father that I know I have the potential to be. I know very well not having a father figure in one's life, I would never want my children to have that experience.
>
> I'm looking forward to attending the 52 weeks of domestic violence classes and cognitive self-change classes, not only so I can be a more productive citizen in the

> community but so I can be a better father and better man for both my family and myself.

(PSI, p.29, Ls.9-21.)

Mr. Pittman's difficulty with abandonment certainly cannot not justify his behavior toward Ms. Lance; he has taken responsibility for actions that he knows were wrong. (PSI, p.39.) He cannot change his past, but he desperately wants to change how he allows that past to influence his behaviors in the present. (PSI, p.46.) His remorse and responsibility for his actions serve as mitigation his case. *See State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008).

In light of the mitigating circumstances presented in this case, and notwithstanding the aggravating ones, Mr. Pittman's sentence of seven years, with two fixed, is excessive and therefore unreasonable, representing an abuse of discretion.

II.

In Light Of Mr. Pittman's Success During His Rider, The District Court Abused Its Discretion By Relinquishing Jurisdiction Instead of Suspending His Sentence and Placing Him on Probation

This Court reviews a district court's decision to relinquish jurisdiction for an abuse of discretion. *State v. Merwin*, 131 Idaho 642, 648 (1998). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate pursuant to I.C. § 19-2521. *State v. Chapel*, 107 Idaho 193, 194 (Ct. App. 1984).

Mr. Pittman's performance during the rider, and the IDOC's considered assessment of Mr. Pittman's performance, warrant probation in this case. First, Mr. Pittman successfully completed the requirements of the Cognitive-Behavior Interventions for Substance Abuse course. As described by his program facilitator, Mr. Pittman "was an appropriate group participant that completed all assigned work on time during this session." (PSI, p.184.)

> Despite his propensity for wearing the humor mask, Mr. Pittman was able to repeatedly demonstrate that he was paying attention to what was being discussed in group and the skills taught in this group. He was able to navigate all of the skills and chose relevant and realistic high-risk situations to utilize these skills in.

(PSI, p.184.)

Mr. Pittman also successfully completed the IDOC's Aggression Replacement Training course, and its Pre-release Program. (PSI, pp.185, 186.) He learned that his behavior will continue to affect his life and the choices that will be made available to him. (PSI, p.184.) He recognized the importance of making changes to his social circle, and he came to appreciate the negative consequences, should he fail to make those changes. (PSI, p.184.)

Mr. Pittman's rider performance was not perfect. Over the course of the program, he accrued a variety of informal reprimands, ranging from trading food with another offender, to sleeping during count, to using an office window as a personal mirror. (PSI, p.184.) He also received one formal disciplinary violation, late into the program, after a collection of personal, although unauthorized, items[2] was found in his cell. (PSI, p.183). However, these violations were neither severe nor criminal in nature, and did not warrant relinquishing jurisdiction. Significantly, the IDOC – well aware of these infractions – concluded Mr. Pittman "was not a serious disciplinary problem," indicating that he "should be able to follow the rules of probation." (PSI, p.188.)

In light of Mr. Pittman's successful completion of the rider and the IDOC's recommendation for probation, and notwithstanding his relatively minor behavioral glitches, the district court abused its discretion by relinquishing jurisdiction instead of placing Mr. Pittman on probation.

[2] The collection consisted of two radios, a bowl, tweezers, a clipper, a brown glove, two hair picks, headphones, excess photos, an inappropriate drawing, and a pair of gloves. (PSI, p.183.)

III.

The District Court Abused Its Discretion When It Denied Mr. Pittman's Rule 35 Motion For A Reduction Of Sentence In Light Of The New Information He Offered

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id.*, citing *Lopez*, 106 Idaho at 450. "If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction. *Id.*

Mr. Pittman filed a Rule 35 motion asking the district court for leniency.[3] (R., pp.73-74.) In support of his request, he provided the court a letter detailing his positive growth during the rider program, and set forth reasons why he would be successful on felony probation. (R., p.74.) He told the court, "I learned how to take control of my attitude against others [and] how to put myself in other people's shoes." (R., p.74.) He admitted, "There isn't any day or night that [goes] by that I don't think about my crime against Danielle Lance, I take full responsibility [for] my action." (R., p.74.) He also expressed concern that living in the prison environment could put him back into his old ways of thinking; he asked for a shortened term, with probation, so that he could begin using his improved ways of thinking right away. (R., p.74.)

In light of this new information, and in view of Mr. Pittman's successful performance on

[3]Mr. Pittman's appeal challenges the district court's December 28, 2016 Order that denied his first Rule 35 motion, filed December 13th; he does not challenge the Order that denied his successive Rule 35 motion.

the rider program and desire for treatment and change, the district court's refusal to reduce Mr. Pittman's sentence, or to place him on probation, was unreasonable, and represents an abuse of discretion.

CONCLUSION

Mr. Pittman respectfully requests that this Court remand his case to the district court with instructions to place him on probation. Alternatively, he asks this Court to reduce his sentence.

DATED this 6th day of April, 2017.

_____/s/_____
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 6th day of April, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

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STEVEN J HIPPLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

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ADA COUNTY PUBLIC DEFENDER
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_____/s/_____
EVAN A. SMITH
Administrative Assistant

KAC/eas